



“Envisioning Our Future” **Water Quality/Nonpoint**

Session B on Tuesday, April 9, at 2:45 – 4:00 p.m. in Moody Hall, Activities Room
Environment Virginia Symposium 2013

Conveners: James Golden, DEQ
James Davis-Martin, DCR
Darrell Marshall, VDACS

Sub-issues suggested by stakeholders in previous interviews with DEQ staff:

- Implementation of TMDLs, including appropriate balance of requirements between point and nonpoint sources
- Accommodation of discharges from new industries and wastewater treatment plants
- Fresh water nutrient standard
- Appropriate methods of land application of manure, litter and biosolids; other beneficial uses (e.g., energy production)
- Reducing impacts of water pollution on recreational and commercial fisheries
- Effectively addressing emerging contaminants in water supplies, such as pharmaceuticals and personal care products
- Cost of BMPs
- Trading between farmers and wastewater treatment plants and MS4s
- Land conservation practices that improve water quality
- Legacy pollution issues (e.g., PCBs, old military facilities)
- Measuring effectiveness of nonpoint BMPs (based on improved water quality or numbers in models?)
- Flexibility in which BMPs to adopt in a given setting
- For trading purposes, evaluating whether it is realistic to take land permanently out of cultivation & still feed people in 2050
- Contribution by individuals to nonpoint-source pollution (e.g., fertilizing & watering lawns) as well as by farmers & municipalities
- Funding educational efforts (e.g., extension service)
- Urban water standards & related concepts (i.e., does all water need to be fishable/swimmable?)

*If you have further ideas to contribute, please email them to carol.wampler@deq.virginia.gov.
Thank you for contributing to the dialogue on our FUTURE.*

CONVENERS:

JAMES GOLDEN

James Golden is currently DEQ's Deputy Director for Operations responsible for the agency's Air, Land Protection, and Water Divisions as well as the six Regional Offices. He has been with DEQ since 1991 and held a number of positions including Permit Writer, Regional Permit Manager and Regional Deputy Director. He received a Bachelor of Science degree in Manufacturing Engineering from the University of Western Carolina.

JAMES DAVIS-MARTIN

James Davis-Martin is the Chesapeake Bay Program Coordinator for the Virginia Department of Conservation and Recreation, and has worked for DCR for about 15 years, both in field positions and at the central office in Richmond. Most recently, he served as the project lead for development of Virginia's Phase II Chesapeake Bay Watershed Implementation Plan. James has broad technical knowledge of the Bay Model, non-point source programs and the associated best management practices, and the Chesapeake Bay TMDL planning process. James has held previous positions with the Coast Guard, National Oceanic and Atmospheric Administration and Army Corps of Engineers.

DARRELL MARSHALL

Darrell Marshall currently manages the Agricultural Stewardship Act Program at the Virginia Department of Agriculture and Consumer Services. Previously, he worked for DCR as a Nutrient Management Specialist. Darrell has worked for state and/or local government in agriculture and natural resource management for over 15 years. He holds a B.S. in Environmental Science from Ferrum College, as well as state certifications in Nutrient Management Planning and Erosion & Sediment Control.

REPORTER:

Andrea Wortzel, Esquire, Hunton & Williams

Session Notes

Carol Wampler welcomed attendees on behalf of DEQ and introduced co-host of the Envisioning track, Tammy Stephenson, as well as the session conveners. She explained that the "Envisioning Our Future" sessions are part of DEQ's seeking stakeholder input regarding future environmental

and energy priorities. The Virginia General Assembly formed DEQ in 1993 by joining four agencies – State Water Control Board, Department of Air Pollution Control, Department of Waste Management, and Council on the Environment, which was responsible for long-range planning. Now, at Environment Virginia, expert conveners will facilitate discussion among attendees to get information on how DEQ and other parties should plan for the next 30-50 years. The session reporter, attorney Andrea Wortzel, will capture comments. Summaries will be posted on DEQ's and VMI's websites and will form the basis of white papers to be submitted to DEQ's Director and the Secretary of Natural Resources.

Convener James Golden made introductory remarks.

Urban wastewater director – Will we need permits in the future? If all are doing what they're supposed to be doing, why are permits necessary?

James Golden – good question; does the historic framework continue to be relevant as we move forward?

More data-driven world of the future, real-time information may be publicly available, negating the need – social enforcement will control. (Convener James Davis-Martin).

Urban wastewater director – water reuse regulations; spend millions of dollars to clean up water and then dump it back in the river – need to look at it as a valuable resource rather than something we're disposing.

Conservation group representative – what is extracted from water at treatment plants should be looked at as a resource as well that can be reused in the future.

Conservation group representative – transition of parts of DCR back to DEQ offers an opportunity for all of the different departments with environmental responsibility to better coordinate their regulations, policies. It would help if all agencies used the same standards, incorporate all the types of actions that improve water quality rather than focusing on a single aspect. Focus on the whole watershed and how all the actions work together – including how the departments work/fit together.

James Golden – consistency is something we continually chase in the government.

Attorney – data management/acquisition for nonpoint sources. How will this change in the future?

What additional activities are going to require permits in the future? (Convener Darrell Marshall)

Conservation group representative – don't give up on permits. Have had good intentions for years, but haven't reached our goals. Need the accountability. Don't always have the money to invest in it, but if you have a permit you have an obligation to invest. Based on plenary session, could do e-permitting – but how do we verify in the virtual world.

Conservation group representative – with permitting there needs to be verification of compliance. A lot of things happen at the local level, with local adaptations. Need to track what's happening and confirm that permits are actually working.

Local government representative – realm of storm water and permits for localities. If you set something, whether general or individual permit, the term is for 5 years. Need a more iterative process. Changes occur at the local level. EPA could make assumptions that are false and issue NOVs on those assumptions – this doesn't get us where we need to be. Need to focus on best practices.

Carol – from around the state, feeling was that for point sources there are permitting programs/regulations to address. Greater concern about how to address nonpoint sources and address them effectively. Any thoughts on those nonpoint challenges?

James Golden – regulatory world has evolved in a permit focus. May have been easier than focusing on monitoring/results perspective. Could shift away from permitting and focus on monitoring and target-identified issues that are revealed through the monitoring. Would help with nonpoint source issues as well.

Attendee – self-certification processes show some promise. Would take burden off of state agencies. Permits are necessary to implement policy, but self-certification/self-policing shows good results. Some states are empowering NGOs to call out violators to address violations that the state agencies could not reach/did not have the resources to address. Hybrids of permitting that are emerging that may be useful. Industrial dischargers are focused on preventing.

James Golden – interesting self-certification programs in various states. A lot resulting from reduced government resources. Those that don't try to do the right thing tend to be the extreme minority.

Conservation group representative – for point sources, there is more and more continuous monitoring equipment available so self-certification is more viable. Is the silence on nonpoint issues because more people work for point sources? Sense in the room?

Majority of people work for point sources, rather than nonpoint sources.

Conservation group representative – several years ago, Chesapeake Stormwater Network put together a tool for industrial clients that involved an audit of the site with education/awareness program for staff and interaction with the local watershed group. It had a lot of success in discovering point sources and cleaning up the site. Became a point of pride for the company. Holds a lot of promise. Non-profit / private partnership. Many of the staff were unaware that they had a permit and what their sources of contamination were. Very useful program.

Attendee – Are riverkeepers helping with these issues (especially with respect to monitoring?).

Response from a riverkeeper – we play a big role. Our main charge is to be a pollution response advocate. Our conservation group focuses on getting citizens to do the leg work and then report

the problems. Cited Isle of Wight discharge discovered last year. Work with DEQ Pollution Response to deal with these issues; also do compliance sweeps and file lawsuits where necessary.

James Golden – observed that NGOs come to the table more in the last decade. But challenges garnering sufficient interest on the regulatory / guidance revisions process. More involvement on this side will also help.

Attendee – in Maryland, have a tributary-specific implementation plan. In Virginia, it's a state WIP. Do Riverkeepers and other NGOs actually go into a tributary and document land use along the tributary to identify issues (particular for agricultural use, etc.)?

James / James – do have watershed implementation plan. Bay WIP is at state-level, primarily based on tools available (model). But state TMDLs are individual water-body based.

County public utilities director – one challenge for us is how to define success. Differing opinions about how to define success – what is our goal in 30-50 years? Different rules for different sources (point vs. nonpoint) – end up with finger pointing; should we go more voluntary, less permit, or is going more permit a more successful model? Having different approaches for different sources seems to lead to more conflict.

Attendee – we've had 30 years of voluntary (for nonpoint) and it hasn't worked.

Convener James Davis-Martin – also had 30 years of permits and it hasn't entirely worked.

Attendee – if you implement it on the ground with your client/operator, then it gets done. If you take a permit and put it on the shelf, you won't see the results. Industries are becoming more proactive about achieving compliance.

Industry representative – I am an operator, in charge of our VPDES permit, no compliance issues. Come from an area where there are small local family owned/operated farms. What will imposing a permitting program do to them, both in terms of cost of the process/fees and cost of compliance?

Darrell Marshall – try to work with those operations to find a balance.

James Golden – when you spend a lot of years in the regulatory business and work with different programs/communities, you realize that each one is unique. The programs from a broad sense are developed very similarly. May be more effective to tailor the program to the site-specific issues or to the “client.” Tools from the federal government don't provide flexibility in how to deal with different communities. Huge issue. Probably an area for change.

Attorney – in this country, we have a federalist system. How much room is there for change, development of new programs? Bound by federal statutes that restrict that flexibility. Difficult to make a change at the federal level. How do we use that federalism model (if it can be used) to generate new ideas or the laboratory for innovation? What do we really value – choices have to

be made. Is every water body destined to be clean for every single use? Or is there a choice – this water body is good for these uses, but need to live with more limited uses on this other water body. Hard to make these choices. How do we make the choices in an educated way? Need to develop this process – real challenge.

State agency representative – program has been in place since 1997 (agricultural stewardship); idea was to deal with bad actors. Looking to the future, will see areas of Virginia where you will not see certain agricultural operations due to economics of compliance. Will become difficult to do livestock farming of any kind in certain areas of the state. Value of agriculture vs. more development – it's a dilemma.

James Golden – 70-80% of DEQ budget comes from federal government. If state wants to do its own thing, have to figure out how to pay for it.

Attendee – look at European model – taken certain technologies and used them on a smaller scale. Incentivize land users to look at technology that can make/save them money and also take away concerns about nonpoint source pollution. In U.S., it's been difficult to get this technology. Incentivize vs. regulate.

Industry representative – how are you going to sell a farmer who may or may not have high school / college education that he has to purchase the technology and why? How do you explain? A – because he can make money.

Conservation group representative – this is where you partner with soil and water conservation districts. That's their area of expertise. Relates to the need to integrate various programs.

Industry – but is the technology a best management practice?

Attendee – same issue with storm water management. Need to look at small-scale systems, look at the storm water as a resource where it's generated. Large systems don't work. Need to look at the smaller scale, both for agricultural issues and storm water. We think of water, wastewater, point, nonpoint, but everything is water. All should be governed by one agency. Referenced Accotink case and conflict between VDOT and DEQ/EPA. Need a paradigm shift, with one agency that addresses all water issues, including the airshed.

Convener Darrell Marshall – more watershed-based approach – how does that mesh with the one larger agency? How to you look at the small scale while upscaling the agency in charge?

Attendee – if we have one agency, they can prevent the conflict that keeps us from applying the small-scale solution. All water problems are local. Local governments need guidance. Need leadership from the agency.

Attendee – even though some may not have formal education, can do cost share to build fences to keep animals out of the streams. Can see that this is better, and work together to find solutions.

Attendee – American Society for Civil Engineers just released their report card – related infrastructure as a country; but said that we will need over \$6 million in infrastructure in Virginia for drinking water infrastructure alone. Have to be aware of the statistics like this.

Attendee – Wisconsin or Minnesota deemed that they had to address water quality and asked the public if they would accept 1/8 of a cent increase in food product costs to improve land use around water bodies. Was accepted by 7% (or 70?) of the voting public. Have to come up with ways to find new funding sources. Has Virginia thought about funding sources, adding fees to products produced using water?

Local government representative – flush fee flatly rejected in Virginia several years ago, but brought some attention to the need. Generally, fees in Virginia will not be approved. Local governments are maxed out on debt service (as is the U.S. government). How do we 30-50 years from now account for how we spent that money?

Consultant – need good water to make good beer. Relayed an anecdote about the impact of septic systems on a lake and the willingness of surrounding property owners to invest in solving the problem. Right now water is still cheap, we don't recognize it for the resource it is. But in 50 years if the pollution is more visible, people will be willing to pay to fix it.

Industry representative – if you were to burn poultry waste on a local level, could do general permit for small air sources (didn't work on a larger scale for a host of reasons). Potential for general permit that would make it doable for smaller agricultural operations. Other comments supported this concept.

Conservation group representative – Virginia is a leader in some of this work. Virginia Tech work on small-scale agricultural operations. Gasification vs. burning/incineration. Turning manure into a product that's marketable is something that will be important in terms of solving nonpoint source pollution issues.

James Golden – are all streams worthy of the same level of protection? Have this issue come up regularly. Anyone have any thoughts on how this would work?

James Davis- Martin – seems hard to justify holding a stream to a swimmable standard if you couldn't possibly submerge yourself in that stream. Doesn't need to be the same standard for every stream.

Attendee – but that water goes somewhere – is the destination water body swimmable? And haven't we already decided through the Clean Water Act what our definition of success is and how that should be applied/achieved?

Conservation group representative – dilution is not the solution. Bodies of water are all interconnected. Impact is cumulative. Have to think about where that water goes.

James Golden – it is a complicated issue.

Local government representative – should the CWA be updated? Political gridlock, so won't happen any time soon. Integrated planning approach that EPA is now shopping may provide opportunities. Maybe the question is not whether there should be different standards, but what is our priority? How does it fit with other goals?

Consultant – in looking at the state of Virginia, in 20-30 years, are there different problems in different areas of the state that will be more difficult to solve? Answer – yes. Does the state have an idea of how to address those different issues? Answer – we were hoping to get those answers today. One solution doesn't fit all.

Attendee from Norfolk – key issue in an urban area: boating. Mentioned recent revisions to the comprehensive plan in Norfolk. Boaters/marina owners demanded a revision relating to no-discharge zones. Issue was not raised until the last minute. Disconnect because some marinas that have moved to clean marina status and smaller group said they couldn't comply due to cost, etc. Big issue.

Carol – Thanked everyone for their comments and noted that additional comments may be sent to her by email. Cabell Brand's book was awarded as a door prize.